cial assistance either directly or indirectly by a company in dealing with its own shares is wide, it does not prohibit a debenture creating a floating charge as in the present case. For these reasons we would dismiss the appeal with costs. Deposit to respondents to account for taxed costs.

Appeal dismissed.

Solicitors: *KS Narayanan Associates; Skrine & Co.*

Reported by *Prof Ahmad Ibrahim*

Public Bank Bhd v Pengarah Tanah dan Galian, Johore Bahru & Anor

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 01-35 OF 1989
HASHIM YEOP A SANI CJ (MALAYA), GUNN CHIT TUAN AND JEMURI SERJAN SCJJ
29 JUNE 1990

Land Law — Registrar's caveat — Land charged to bank — Order for sale of land obtained — Registrar's caveat entered on ground that registered owner owed income tax — Application to registrar to remove caveat refused — Appeal — Time for appeal — National Land Code 1965, ss 321 & 418

The registered owners of a piece of land at Kota Tinggi, Johore, had charged it to the appellant bank. Owing to default by the registered owners, the appellant obtained an order of the sale of the said land toward satisfaction of the amount outstanding on the loan. Before the auction sale could be held, the appellant received a notification on 20 October 1988 from the first respondent that he had entered a registrar's caveat upon the register document of title to the said land on the ground that the registered owners owed income tax to the Inland Revenue Department. After the first respondent had refused to cancel the registrar's caveat, the appellant on 29 January 1989 appealed to the High Court against the refusal. The learned Judicial Commissioner dismissed the application. [See [1990] 2 MLJ 510.] He held that s 321(3) of the National Land Code 1965 did not apply in this case as the registrar had not cancelled the caveat of his own motion nor was there any application by the registered proprietors of the land. He also held that the appeal was filed out of time as it was filed more than three months after the date of the communication of the registrar to enter the caveat.

Held, dismissing the appeal:

(1) The learned Judicial Commissioner was correct in holding that s 321(3)(a) of the National Land Code 1965 did not apply in this case as the registrar had not cancelled the registrar's caveat of his own motion.

(2) The learned Judicial Commissioner was also correct in law when he held that for the purpose of computation of time under s 418 of the National Land Code 1965, time runs from the communication of the decision of the registrar to enter a caveat because in the circumstances of this case, a decision under s 418 of the Act can only include any refusal of an application for the cancellation of the registrar's caveat under para (b) of s 321(3) of the Act by the proprietor of the land affected. The decision in this case which could be appealed against by the appellant, who is not the proprietor of the land, under s 418 of the Act was the act of the Registrar in entering the registrar's caveat. The appeal was therefore correctly held to be out of time.

[Pemilik-pemilik didaftar sekeping tanah di Kota Tinggi, Johore, telah mencagarkan tanah itu kepada bank perayu. Oleh kerana pemilik-pemilik itu telah ingkar, perayu telah mendapat perintah penjualan tanah itu untuk pembayaran jumlah wang yang terhutang. Sebelum penjualan lelong dapat diadakan, pada 20 Oktober 1988 perayu telah mendapat pemberitahuan dari responden pertama bahawa ia telah memasukkan kaveat pendaftar ke atas tanah itu oleh kerana pemilik-pemilik didaftar tanah itu telah berhutang cukai pendapatan kepada Pejabat Hasil Dalam Negeri. Selepas responden pertama telah enggan membatalkan kaveat pendaftar itu, perayu pada 29 Januari 1989 telah merayu ke Mahkamah Tinggi terhadap keengganan itu. Yang arif Pesuruhjaya Kehakiman [sila lihat [1990] 2 MLJ 510] telah menolak permohonan itu. Beliau berpendapat bahawa s 321(3) Kanun Tanah Negara 1965 tidak terpakai di dalam kes ini oleh kerana pendaftar telah tidak membatalkan kaveat itu atas usulnya sendiri dan tidak terdapat apa-apa permohonan oleh pemilik tanah itu. Beliau juga berpendapat rayuan itu telah dibuat selepas masa yang ditetapkan oleh kerana rayuan itu dibuat lebih dari tiga bulan selepas tarikh pemberitahuan pendaftar memasukkan kaveat itu.

Diputuskan, menolak rayuan itu:

(1) Yang arif Pesuruhjaya Kehakiman betul apabila beliau memutuskan bahawa s 321(3)(a) Kanun Tanah Negara 1965 tidak terpakai di dalam kes ini oleh kerana pendaftar tidak membatalkan kaveat itu atas usulnya sendiri.

(2) Yang arif Pesuruhjaya Kehakiman juga betul dari segi undang-undang apabila beliau memutuskan bahawa untuk maksud pengiraan masa di bawah s 418 Kanun Tanah Negara 1965, masa berjalan dari pemberitahuan keputusan pendaftar memasukkan kaveat oleh kerana di dalam keadaan kes ini sesuatu keputusan di bawah s 418 Kanun itu hanya termasuk penolakan permohonan untuk membatalkan kaveat pendaftar di bawah perenggan (b) s 321(3) Kanun itu oleh pemilik tanah yang terlibat. Keputusan yang mana terhadapnya rayuan boleh dibuat oleh perayu, yang bukan pemilik tanah itu, dibawah s 418 Kanun itu ialah perbuatan pendaftar memasukkan kaveat pendaftar. Keputusan bahawa rayuan itu telah dibuat selepas masa yang ditetapkan adalah betul.]

Cases referred to

1 *Registrar of Titles, Johore* v *Temenggong Securities Ltd* [1976] 2 MLJ 44 (not folld)
2 *Land Executive Committee of Federal Territory* v *Syarikat Harper Gilfillan Bhd* [1981] 1 MLJ 234 (refd)

Legislation referred to

National Land Code 1965 ss 320, 321, 418

Appeal from: Originating Motion No 25-10 of 1989 (High Court, Johore Bahru)

Tan Kiah Teck for the appellant.
Abdul Rahim Uda (Federal Counsel) for the first respondent.
Mohd Bazain Idris (Senior Federal Counsel) for the second respondent.

Cur Adv Vult

Gunn Chit Tuan SCJ (delivering the judgment of the court): The registered owners of Grant 10767 lot 317 Bandar Kota Tinggi (hereinafter referred to as 'the said land') had charged it to Public Bank Bhd ('the appellant'). Owing to default by the registered owners as chargors of the said land, the appellant on 7 September 1988, obtained an order of sale of the said land towards satisfaction of the sum of $677,898.44 due as at 17 August 1988. The auction sale of the said land was fixed for 14 January 1989.

On 20 October 1988, the appellant received a copy of Form 19A of the National Land Code 1965, from the Pengarah Tanah dan Galian, Johore ('the first respondent') informing it that he had entered a registrar's caveat upon the register document of title to the said land on the ground that the registered owners owed income tax to the Inland Revenue Department.

The appellant's solicitors, Messrs Tan & Tan, wrote to the first respondent on 21 December 1988 requesting him to cancel the registrar's caveat which was an obstacle to the appellant's auction sale as the successful purchaser could not be registered as owner of the said land. The first respondent in a reply dated 27 December 1988, rejected the appellant's request and advised it to write to the Inland Revenue Department. On 4 January 1989, the appellant's solicitors wrote a letter to the Inland Revenue Department requesting them to make arrangements to withdraw the registrar's caveat. But on 14 January 1989, the appellant's solicitors received a reply dated 11 January 1989 from the Inland Revenue Department informing them that they refused to withdraw the registrar's caveat and stipulated a condition that the appellant undertakes to pay the excess, if any, to the Inland Revenue Department before it would consider the matter.

On 29 January 1989, the appellant filed a notice of originating motion appealing against the first respondent's refusal to cancel the registrar's caveat on the said land. The Director-General of Inland Revenue (the second respondent) applied by summon-in-chambers dated 12 June 1989, and was by an order of court dated 21 June 1989, allowed to intervene and be cited as the second respondent to the action. In an affidavit dated 11 June 1989, affirmed by the assistant director of the Department of Inland Revenue, Johore, it was averred that following investigation by the Department of Inland Revenue, it has been disclosed that the registered owners of the said land have been involved in a scheme of tax evasion and under declaration of income. During the year 1988, notices of additional assessments of income tax for the years of assessments 1974 to 1982 were issued to the registered owners. The total amount of tax due and owing to the Director-General of Inland Revenue from the registered owners was $886,352.93. On 29 September 1988, in order to protect the interest of the Federation, the Department of Inland Revenue made a request to the first respondent for an entry of a registrar's caveat on the said land.

Pursuant to the provisions of s 320 of the National Land Code 1965, the Department of Inland Revenue was informed by the first respondent that a registrar's caveat was duly entered on the said land on 29 December 1988.

On 22 June 1989, the learned Judicial Commissioner in the High Court at Johore Bahru ordered that the appellant's originating motion be dismissed without costs. In his grounds of decision the learned Judicial Commissioner referred to s 321(3) of the National Land Code 1965, which reads as follows:

> A Registrar's caveat shall continue in force until it is cancelled by the Registrar —
>
> (a) of his own motion; or
> (b) on an application in that behalf by the proprietor of the land affected; or
> (c) pursuant to any order of the Court made on an appeal under section 418 against his decision to enter the caveat, or his refusal of any application for its cancellation under paragraph (b).

and pointed out that para (b) and the second limb of para (c) of s 321(3) do not apply in this case as there was no application for the cancellation of the said caveat by the proprietors of the land in question. He pointed out that the appellant was not the proprietor of the land in question, and consequently had no right to apply for the cancellation of the caveat under para (b) or the second limb of para (c).

The learned Judicial Commissioner was also of the view that by virtue of s 418 of the National Land Code 1965, the time limited for appeal to the court against the order of the registrar is three months from the date of communication of the decision of the registrar to enter the caveat, and not his decision to refuse the appellant's application for cancellation of the said caveat since para (b) and the second limb of para (c) of s 321(3) are not relevant in the present case. The learned Judicial Commissioner therefore held that for the purpose of computation of time under s 418 of the National Land Code 1965, it was crystal clear that time runs from the date of communication of the decision of the registrar to enter the caveat, ie from 20 October 1988. He pointed out that the appellant's appeal was entered on 29 January 1989, and held that the appeal was filed out of time.

Mr Tan Kiah Teck, counsel for the appellant, first contended before us that the learned Judicial Commissioner had erred in law by failing to direct his mind to s 321(3)(a) of the National Land Code 1965. He then referred to the judgment of Lord Diplock in *Registrar of Titles, Johore* v *Temenggong Securities Ltd & Anor*[1] at p 47 in which his Lordship of the Privy Council after referring to s 320 of the National Land Code 1965, which specifies

the circumstances in which registrar's caveats may be entered, referred to s 321(3) which deals with the circumstances in which such caveat may be cancelled and said as follows:

> Under these sections the registrar's functions in relation to registrar's caveats are not exclusively ministerial as they are in relation to the other kinds of caveats. They require the exercise of a discretion that is quasi-judicial in its nature. The prohibitory consequences resulting from the entry of a registrar's caveat impose what may be very damaging restrictions upon the private rights of the proprietor of the land. The registrar is not entitled to impose them unless they appear to him to be necessary or desirable for one or more of those purposes which upon the true construction of the section are specified in para (a) or (b) of s 320(1) or necessary or desirable to counteract such documentary error as is mentioned in para (c).
>
> In determining whether or not to exercise the power conferred upon him by the section, the registrar can only act upon such information as is available to him. This will consist of what is entered in the register itself or filed in the registry, together with such additional information as may have been supplied to him by whoever has requested him to exercise his power to enter a registrar's caveat.

If we had understood Mr Tan correctly, it was his contention that the registrar could only enter a caveat for one or more of those purposes specified in para (a) or (b) of s 320(1) or necessary or desirable to counteract such documentary error as is mentioned in para (c) therein. But here we must point out that learned counsel might have overlooked the fact that s 320(1) of the National Land Code 1965 was amended after the Privy Council's decision in *Registrar of Titles, Johore* v *Temenggong Securities Ltd & Anor*[1] by the addition of the following para (ba):

> ... for securing that the land will be available to satisfy the whole or part of any debt due to the Federation or the State Authority whether such debt is secured and whether or not judgment thereon had been obtained; or ...

After the amendment of s 320(1) of the National Land Code 1965, there is therefore an additional circumstance for which a registrar's caveat may be entered. And in this case the registrar's caveat appeared to be necessary or desirable for the purpose specified in para (ba) of s 320(1) of the National Land Code 1965.

Mr Tan then referred to the following s 418 of the National Land Code 1965:

> Appeals to the Court
>
> (1) Any person or body aggrieved by any decision under this Act of the State Commissioner, the Registrar or any Collector may, at any time within the period of three months beginning with the date on which it was communicated to him, appeal therefrom to the Court.
> (2) Any such appeal shall be made in accordance with the provisions of any written law for the time being in force relating to civil procedure; and the Court shall make such order thereon as it considers just.
> (3) In this section 'decision' includes any act, omission, refusal, direction or order.

He pointed out that in that section the word 'decision' includes any refusal and contended that the appellant could therefore appeal against the refusal of the first respondent on 27 December 1988, to cancel the registrar's caveat. Counsel also referred to s 327 of the National Land Code 1965 concerning the removal of private caveats by the court and pointed out that under that section any person or body aggrieved by the existence of a private caveat may apply to the court at any time for an order for its removal.

Encik Mohamed Bazain Idris, senior federal counsel for the second respondent, not only referred to s 418 of the National Land Code 1965 but also referred to s 321(2) of the National Land Code 1965 which reads as follows:

> As soon as may be after the entry of any such caveat, the Registrar shall serve upon the proprietor of the land thereby affected a notification in Form 19A.

Senior federal counsel then pointed out that according to para 6 of the affidavit of the manager of the appellant affirmed on 28 January 1989, the appellant had also received a copy of Form 19A from the first respondent on 20 October 1988. He then referred to *Land Executive Committee of Federal Territory* v *Syarikat Harper Gilfillan Bhd*[2] and pointed out that the appellant had failed to exercise its right of appeal pursuant to s 418 of the National Land Code 1965.

Encik Abdul Rahim Uda, federal counsel, for the first respondent, also referred to s 321 of the National Land Code 1965 and stated that its provisions are clear. He contended that the appellant's only remedy was under s 321(c) of the National Land Code 1965, and also contended that time was of the essence and must be adhered to.

In our view the learned Judicial Commissioner did not err in law, as contended by Mr Tan, by failing to direct his mind to the provisions of s 321(3)(a) of the National Land Code 1965 which does not apply in this case because it provides that a registrar's caveat can continue in force until it is cancelled by the registrar of his own motion which he did not do so in this case. We were also satisfied that the learned Judicial Commissioner was correct in law when he held that for the purpose of computation of time under s 418 of the National Land Code 1965, time runs from the date of communication of the decision of the first respondent to enter the caveat, ie from 20 October 1988, because, in our view, a decision under s 418 of the Act can, in the circumstances of this case, only include any refusal of an application for the cancellation of the registrar's caveat under para (b) of s 321(3) by the proprietor of the land affected. The decision in this case which could be appealed against by the appellant, who is not the proprietor of the said land, under s 418 of the National Land Code 1965, was the act of the registrar in entering the

registrar's caveat. In the circumstances of this case the learned Judicial Commissioner was therefore correct in ordering that the appellant's originating motion be dismissed. We too dismissed the appellant's appeal with costs and ordered that the deposit be paid to the respondents on account of their taxed costs.

Appeal dismissed.

Solicitors: *Tan & Tan.*

Reported by *Prof Ahmad Ibrahim*

Dirkje Peiternella Halma v Mohd Noor bin Baharom & Ors

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02-291 OF 1989
MOHAMED AZMI, AJAIB SINGH AND GUNN CHIT TUAN SCJJ
4 JUNE 1990

Damages (Personal Injury or Death) — Loss of earning capacity — Road accident — Serious injuries caused — Plaintiff a qualified registered nurse on no-pay leave — Claim for loss of earnings and loss of earning capacity — Civil Law Act 1956, s 28A(2)(c)

Statutory Interpretation — Purposive interpretation — Civil Law Act 1956, s 28A(2)(c)

Words and Phrases — 'Before' — Civil Law Act 1956, s 28A(2)(c)(i)

Words and Phrases — 'Prior' — Civil Law Act 1956, s 7(3)(iv)

In this case the appellant was a qualified registered nurse who had been employed to look after mentally retarded patients in Holland from 1 October 1980. On 1 November 1983 she took no pay leave for a period of two and a half years to enable her to go on a world tour. After completion of her world tour she was to continue her employment on the same salary. The appellant went on a cycling tour and arrived in Malaysia on 21 October 1984. On 24 October 1984, while cycling towards Ipoh, she was knocked down by a bus belonging to the second respondent and driven by the first respondent. The appellant suffered very serious injuries. Liability was admitted by the respondents. By consent a sum of $80,000 as general damages for pain and suffering and loss of amenities was awarded to the appellant. The respondents also agreed a sum of $55,880 being awarded to the appellant as agreed loss of earnings from the date of accident till the date of trial. The point at issue in the High Court was whether the appellant was entitled to prosecute a claim for loss of future earnings under s 28A(2)(c) of the Civil Law Act 1956. The claim was dismissed in the High Court and the appellant appealed. Before the Supreme Court the appellant was allowed to amend her memorandum of appeal by including an additional ground that the learned judge erred in law in not allowing in the alternative a claim for loss of earning capacity.

Held, allowing the appeal:

(1) As the appellant was on no pay leave and was not receiving any earnings at the time of the accident the court had regretfully to come to the conclusion that she is not entitled to any award of damages for loss of future earnings. The order for a sum of $55,880 awarded to the appellant as agreed loss of earnings from the date of the accident until the date of trial had also regretfully to be cancelled.

(2) The appellant is entitled to be compensated for her loss of earning capacity. There was evidence that she was earning $1,270 per month and there was also evidence that after the accident she was practically a vegetable and would have to be nursed for the rest of her working life.

(3) The appellant has suffered total loss of earning capacity. Such loss in her case would last for the rest of her working life which is roughly another 30 years. Taking into account all past and future contingencies, the fact that the appellant was earning $1,270 per month, her age at the time of the accident and the multiplier fixed by the legislature in the case of loss of future earnings, the court held that the appellant is entitled to a sum of $200,000 for loss of earning capacity, which together with the $80,000 already awarded for pain and suffering as agreed by the parties, would make a total of $280,000 as a fair and reasonable award under general damages.

[Di dalam kes ini, perayu adalah seorang jururawat terlatih dan didaftar yang telah bekerja menjaga pesakit yang cacat di negeri Belanda dari 1 Oktober 1980. Pada 1 November 1983 dia telah mengambil cuti tanpa gaji dua tahun setengah untuk menggembara sekeliling dunia. Selepas itu ia akan kembali bekerja dengan gaji yang sama. Perayu telah melancung naik basikal dan telah sampai ke Malaysia pada 21 Oktober 1984. Pada 24 Oktober 1984 apabila menunggang basikal ke arah Ipoh ia telah dilanggar oleh sebuah bus yang dipunyai oleh responden kedua dan dipandu oleh responden pertama. Ia telah mengalami kecederaan yang sangat teruk. Liabiliti untuk kemalangan itu telah diakui oleh responden-responden. Dengan persetujuan sejumlah $80,000 telah diberi kepada perayu sebagai ganti rugi umum untuk sakit dan penderitaannya dan untuk kehilangan kesenangan hidup. Responden-responden juga bersetuju memberi jumlah $55,880 untuk kehilangan mata pencarian dari tarikh kemalangan itu hingga tarikh perbicaraan.

Perkara yang dipertikaikan di Mahkamah Tinggi adalah samada perayu berhak membuat tuntutan bagi kehilangan mata pencarian akan datang di bawah s 28A(2)(c) Akta Undang-Undang Sivil 1956. Tuntutan itu telah ditolak di Mahkamah Tinggi dan perayu telah membuat rayuan. Di hadapan Mahkamah Agung, perayu telah dibenarkan meminda memorandum rayuannya dengan memasukkan alasan tambahan bahawa hakim yang arif telah tersilap dari segi undang-undang apabila beliau tidak membenarkan sebagai alternati tuntutan untuk kehilangan keupayaan mendapat mata pencarian.

Diputuskan, membenarkan rayuan itu:

(1) Oleh kerana perayu di dalam keadaan bercuti tanpa gaji dan telah tidak mendapat apa-apa gaji pada masa kemalangan itu berlaku, mahkamah dengan dukacita memutuskan bahawa ia tidak berhak mendapat award ganti rugi untuk kehilangan mata pencarian akan datang. Perintah memberi jumlah $55,880 kepada perayu sebagai ganti rugi untuk kehilangan mata pencarian dari tarikh kemalangan itu hingga tarikh perbicaraan juga terpaksa dibatalkan.

(2) Perayu berhak diberi pampasan untuk kehilangan keupayaan mendapat mata pencarian. Terdapat keterangan yang ia telah mendapat gaji $1,270 sebulan dan terdapat keterangan juga selepas kemalangan itu dia telah menjadi lumpuh dan perlu dirawat sepanjang baki hayatnya.